APPEAL NO. 93310

This appeal arises under the Texas Worker's Compensation Act, TEX. REV. STAT. ANN. art. 8303-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). A contested case hearing was held in (city), Texas, on March 17, 1993, (hearing officer) presiding. The issue at the hearing was did the appellant (claimant herein) suffer injuries in the course and scope of his employment on or about (date of injury). The hearing officer found that the claimant did not. The claimant appeals this decision. The respondent (carrier herein) filed no response to claimant's appeal.

The claimant in his request for review takes exception to a number of the findings of the hearing officer. Some of the claimant's complaints are only stylistic such as complaints over the use of particular words such as "stressful" as opposed to "strenuous" in the hearing officer's findings. The substantive thrust of the claimant's appeal is that the finding of the hearing officer that the claimant did not suffer an injury on or about (date of injury), is not supported by the evidence. Thus the question before us on appeal is the sufficiency of the evidence.

DECISION

Finding no reversible error and the decision of the hearing officer not to be against the great weight and preponderance of the evidence, we affirm.

Claimant testified that he went to work for the (employer) in September of 1989 as a "selector." Essentially it was his job to fill produce orders and this required him to lift boxes of produce that weighed up to sixty pounds.

On (date of injury), the claimant injured his back while working for the employer when he slipped and fell while loading a trailer with produce. The claimant filed a workers' compensation claim as a result of this injury and was off work until June 1991. The claimant was released to return to work and did so on June 23, 1991.

On June 23, 1991, while at work lifting produce, the claimant reinjured his back. He reported this injury and filed an additional workers' compensation claim. The claimant was off work until October 21, 1991, due to his (date of injury), and June 23, 1991, injuries.

The claimant testified that while he was released to light duty in August 1991, the employer refused to return him to work until he was released to full duty. Based on full duty release to work, the claimant returned to full duty work with the employer on October 21, 1991. The claimant worked on October 21st, 22nd, and 23rd. Claimant testified that repetitive lifting on these days injured his back. His description of this injury was similar to his description of the June 1991 reinjury.

The claimant did not return to work after (date of injury), and has consequently been discharged by the employer. Claimant has continued medical treatment for his back and contends that his injury of (date of injury), extends into his extremities causing, among other things, carpal tunnel syndrome and headaches.

The claimant testified that radiological reports after (date of injury), showed that he had nerve damage and carpal tunnel syndrome. He argues that medical reports prior to October 21, 1991, did not show that he has neurological deficits and failed to show carpal tunnel. He argues that this proves that his nerve damage and carpal tunnel syndrome resulted from his alleged October injury.

Article 8308-6.34(e) provides that the contested case hearing officer, as the fact finder, is the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility that is to be given the evidence. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992; Texas Workers' Compensation Commission Appeal No. 92641, decided January 4, 1993. As finder of fact, the hearing officer resolves conflicts in the testimony and in the evidence. Burelsmith v. Liberty Mutual Insurance Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

In the present case the claimant strongly disagrees with the reading of the medical evidence by the hearing officer and how the hearing officer chose to weigh the medical evidence. These are matters within the province of the fact finder. The hearing officer's findings in the present case are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

For the foregoing reasons, we affirm the decision of the hearing officer.

Gary L. Kilgore
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge